be doubted, however, whether the facts as we have them do not show a rapid exercise of the reasoning faculty, rather than purely impulsive action.

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LIABILITY FOR "NERVOUS SHOCK." — A clear and well-considered opinion on the subject of liability for physical injuries ensuing upon "nervous shock," or fright caused by negligence, is to be found in 25 N. Y. Suppl. 744 (*Mitchell* v. *Rochester St. Ry. Co.*, Circuit Court, Monroe County). The plaintiff, a married woman, was about to board one of the defendants' street-cars. A car on the opposite track was driven down the hill towards where the plaintiff stood with such speed that the driver could not check his horses until they had almost run into the plaintiff. She was not actually touched, but the fright and excitement of the occurrence produced unconsciousness. As a result of the shock, the plaintiff suffered a miscarriage, and was ill for a long time. Competent physicians testified that the shock was a sufficient cause for all the physical ailments which followed it. Upon the close of the plaintiff's testimony a nonsuit was granted by the trial court. The Circuit Court set this nonsuit aside, holding that "it would have been competent for the jury, upon the facts which appear, to conclude that the negligence of the defendant was the proximate cause of the injury which befell the plaintiff."

The decision is in accordance with the facts within every man's experience. The testimony of physicians is not necessary to prove that ill-health may result from shock. Why, then, in this and similar cases, should the defendant be excused from liability for the natural and proximate consequences of his negligent act? No satisfactory reason for excusing him has been advanced. It has been said in the Privy Council and in the Supreme Court of Pennsylvania that a judgment for the plaintiff would open a wide field for imaginary complaints. But, as the court says in the present case, "the argument *ab inconvenienti* is never of much force, and least of all when it is invoked to enable one to avoid a necessary legal conclusion."

The analogies of the law seem to point irresistibly towards the allowance of a recovery in cases of nervous shock where the plaintiff has proved resulting physical injury. If the admitted negligence of the defendant had acted on brute rather than human nerves, and had produced fright which resulted approximately in injury to the plaintiff, she could certainly have recovered. If the driver of the defendant's car had driven so negligently as to frighten a horse attached to a buggy in which the plaintiff was sitting, and if the horse had run away and thrown her out, she would have had a clear right against the defendant (*McDonald* v. *Snelling*, 14 Allen, 290). So where a horse was frightened to death by the defendant negligently exploding a fire-cracker between his legs, the owner recovered his value (*Conklin* v. *Thompson*, 29 Barb. 218). Now, if the defendant is liable for injury to the plaintiff which is the mediate result of fright produced in the mind of a brute, why is he not liable for injury which is the immediate result of fright produced in the plaintiff's own mind? The law recognizes that a man's mind and nerves may be as effectually surprised and overpowered as a brute's (*Scott* v. *Shepherd*, 1 Sm. L. C. 480; *Holmes* v. *Mather*, L. R. 10 Ex. 261; *Ricker* v. *Freeman*, 50 N. H. 420). So where a plaintiff has acted to his damage on an impulse of self-preservation arising from a dangerous situation

in which the defendant has placed him, he may recover, although he would not have been harmed if he had remained where he was (*Jones* v. *Boyce*, 1 Stark. 493; *Stokes* v. *Saltonstall*, 13 Pet. 181; *Coulter* v. *Express Co.*, 56 N. Y. 585). In the present case, if the plaintiff had in her fright stepped back from the track to avoid the car, and fallen directly under the wheels of a passing wagon, she would have had a clear case against the defendant.

If the horses in *Mitchell* v. *Rochester St. Ry. Co.* had touched the plaintiff, however slightly, her right to recover for her injuries would have been undoubtedly perfect. No intent is necessary to constitute a battery; negligence and unpermitted contact are enough (*Weaver* v. *Ward*, Hob. 134). Actual impact is not essential to an assault; a putting in fear is sufficient to constitute the wrong. If no intent to strike is necessary to make a battery, why should an intent to put in fear be necessary to make an assault? If the law draws a line here between an assault and a battery, upon what reasoning is the distinction to be supported? The action of assault is not in the nature of a criminal proceeding against the defendant. Why, then, is his intent material? What matters it to the plaintiff whether the defendant intended to commit or negligently committed the act which put the plaintiff in fear of his life?

The authorities upon the subject are few, and unfortunately divided. The earlier New York case of *Lehman* v. *Railroad Co.*, 47 Hun, 355, is cited by the Circuit Court, and distinguished on the ground that no negligence was alleged in the case as it appears in the report. The opinion in that case was short, and there was no statement of reasons for the decision; but certainly the case does not appear to have proceeded on the ground assigned by the Circuit Court. The case in the Privy Council (*Commissioners* v. *Coultas*, 13 App. Cas. 222) is also cited, and its reasoning disapproved. The Irish cases which serve to counterbalance *Commissioners* v. *Coultas* (*Bell* v. *Railway Co.*, 26 L. R. Ir. 428, and *Byrne* v. *Railway Co.*, Court of Appeal, Ireland, unreported) are not noticed by the Court, though the former contains perhaps the best-reasoned discussion of the subject. *Purcell* v. *Railway Co.*, 48 Minn. 134, is directly in point for the plaintiff, unless it be said that the contract duty of the defendant towards the plaintiff influenced the decision. There was a similar duty, indeed, in *Bell* v. *Railway Co.*, though the Irish court does not found its decision upon that fact. In *Mitchell* v. *Rochester St. Ry. Co.*, the court takes pains to point out that no contract duty existed, the plaintiff not having boarded the car. *Fell* v. *Railroad Co.*, 44 Fed. Rep. 248, and *Stutz* v. *Railroad Co.*, 73 Wis. 147, while distinguishable, tend strongly to uphold the plaintiff's contention. The whole subject is discussed, and a conclusion reached favorable to the plaintiff's recovery, in Beven on Negligence, 66, 2 Sedgwick on Damages, 8th ed., 643, and 1 Sutherland on Damages, 2d ed., 44.

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THE RULE IN DEARLE *v.* HALL. — In the important case of *Dearle* v. *Hall*, 3 Russ. 1, it was held that if the second assignee for value of an equitable interest gave notice of his claim to the trustee after inquiry as to incumbrances, and the first assignee gave no such notice, the second assignee thereby obtained a priority in favor of his equity.

The property transferred is a relation, and only gives the assignee a